

ECONOMIC DEVELOPMENT DEPARTMENT

NO. 1425

21 DECEMBER 2018

REQUEST FOR PUBLIC COMMENT ON THE FIRST DRAFT SET OF DEFINITIONS OF SMALL AND MEDIUM BUSINESS IN TERMS OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998) AND THE COMPETITION AMENDMENT BILL, 2018 [B 23B-2018]

Background

In my address to the National Assembly at the Second Reading Debate on the Competition Amendment Bill, 2018 [B 23B-2018] (the "Bill") on 23 October 2018, I announced the establishment of a Panel which would draft regulations to give effect to the Bill once it has been passed by Parliament. It was further announced that these regulations would be the subject of consultation with the public and the Competition Commission (the "Commission"), in line with the proposed amendments to section 78 of the Competition Act (Act. 89 of 1998) (the "Act").

Clause 1(f) of the Bill has introduced a new definition for 'medium-sized business'; and clause 1(l) of the Bill has amended the definition for 'small business'. Clause 1(k) of the Bill has further introduced a definition for 'small and medium business', meaning either a 'small business' or a 'medium-sized business'.

The definition of 'small and medium business' has an important bearing on the types of firms which will benefit from certain protections and consideration under the Bill and the Act.

On 12 October 2018, the Minister of Small Business Development published a call for public comment on the National Small Enterprise Definition as contained in the National Small Business Act, 1996 (Act No. 102 of 1996), read with the National Enterprise Amendment Act, 2003 (Act No. 26 of 2003) and the National Small Enterprises Act, 2004 (Act No. 29 of 2004). The National Small Enterprise Definition specifies thresholds based on total annual turnover and the total full-time equivalent of paid employees to determine a micro, small and medium enterprise in a number of industries. The proposed thresholds have been published in the Schedule to Notice No. 1094 in Government Gazette No. 41970.

Such period for public comment has now expired and I am advised that the Department of Small Business Development is currently reviewing the representation received.

Call for public comment

I hereby call on interested parties to provide representation and comment on the appropriateness of the thresholds specified in Gazette No. 41970 regarding the National Small Enterprise Definition, as it may apply to determining a small business or medium-sized business in terms of the Competition Act and Competition Amendment Bill, and whether the proposed definitions sufficiently address the changes in industries as a result of technological shifts, in particular those relating to the Fourth Industrial Revolution.

Process to be followed

In making the proposed small and medium business definitions, I intend to follow the following process:

Step 1 (this step): A first draft definition is hereby published in order to begin an initial consultation on the proposed small and medium business definition prior to the President's assent to the Bill and its subsequent proclamation. Representation and comment should be made by 31 January 2019 in fulfilment of this step of the process.

Step 2: Following the conclusion of the public comment period, the Ministry may host a set of forums with a selection of firms, drawn from small and larger firms. Any firm who wishes to be considered for participation in these forums should write to the Minister by 15 January 2019 to advise of its interest.

Step 3: Following assent of the Bill by the President; promulgation of the relevant sections; and conclusion of the Steps 1 and 2 above, a further second draft set of definitions will be published for public comment.

Step 4: Once this Step 3 has been completed it is expected that a final set of small and medium business definitions will be published, taking into account the public comments, accompanied by promulgation of the amendments to the Act.

The process outlined above is thus intended to allow for a collaborative and open process regarding the publication of the final regulations to enable the maximum participation by affected parties.

Representation and comments, and requests to be considered for participation in any forums on the regulations, should be made by 31 January 2019 and should be addressed to the Minister of Economic Development, for the attention of Ms MT Mushi, Email: ministry@economic.gov.za, Economic Development Department, Private Bag X149, Pretoria, 0001 or hand delivered at 77 Meintjies Street, Block A, Utangamari Building, 3rd Floor, Sunnyside, 0132.

Enquiries: Ms MT Mushi
Tel: 012 394 3458

Closing date: 31 January 2019

A handwritten signature in black ink, appearing to read 'Ebrahim Patel', with a long horizontal stroke extending to the right.

EBRAHIM PATEL
MINISTER OF ECONOMIC DEVELOPMENT